

**National Organic Standards Board
Crops Committee Recommendation for Guidance
Commercial Availability of Organic Seed
Draft 1 – January 18, 2005**

Introduction

The NOP and NOSB have been asked to provide guidance concerning determinations of the commercial availability of organic seed made by accredited certifying agents (ACAs). The objective of this recommendation is to establish appropriate practices to be followed by certification applicants, certified operators, and ACAs for consistent, transparent, and predictable determinations of commercial availability that provide regulatory certainty.

Background

§205.2 of the Final Rule defines “commercially available” as, “the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling as determined by the certifying agent in the course of reviewing the organic plan.”

§205.204(a) states that, “The producer must use organically grown seeds, annual seedlings, and planting stock...”

However, §205.204(a)(1) states that “nonorganically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available...”

Recommendation

In order to ensure consistent application of organic seed requirements, the NOSB recommends the following:

1. The establishment of a national database by an independent party to provide public access to current information on the availability of organic seed varieties. Producers using non-organic varieties not appearing on the database will need to provide justification for such use.

In the interim period before such a database is developed, accredited certifying agents should provide every applicant and certified crop producer with resources relating to organic seed suppliers. Listings of organic seed sources may be found at www.omri.org and www.attra.org.

2. An organic variety is considered to be equivalent to a specific non-organic variety if it meets the operation’s required site-specific agronomic and marketing characteristics.

3. For an organic producer to receive an allowance to use non-organic seed or planting stock to produce a crop that can be sold or labeled “organic,” the producer must provide records to the certifying agent as a part of the organic system plan demonstrating lack of “commercial availability.” These records will provide:

A. Written evidence of efforts to locate and source organic seed by contacting at least three suppliers of organic seed- written evidence may include letters, faxes, e-mail correspondence and phone logs;

B. Justification for use of non-organic seed or planting stock, based on the attributes of appropriate form, quality, and quantity of the seed or planting stock; **and**

C. A description of the site-specific agronomic or marketing characteristics required by the operation; **or**

D. A written description of research comparing organic and non-organic seeds or planting stock if such information is available. Research provided should be conducted using scientific methods (i.e. provide proper controls and replications). Research supporting the justification of using non-organic seeds should address the form, quality and genetic attributes of a specific variety (ies). When a producer makes a claim that the varieties of organic seed are not equivalent to non-organic seed that the producer prefers to use, supporting documentation must be provided to the certifying agent. Documentation of “on farm” trials should be recorded in the operation’s organic system plan.)

4. Buyers of organic agricultural products who contractually require organic growers to grow selected varieties should require or provide organic seed or planting stock. When a producer is contractually obligated by a buyer of organic agricultural products to use a variety or varieties that are not currently available as organically grown seed or planting stock, the producer must receive written documentation from the buyer describing:

(a) the unique characteristics sought by the buyer; and

(b) the non-availability or non-equivalency of organic varieties.

5. In granting an allowance that organically produced seed or planting stock is not commercially available, the accredited certifying agent shall:

A. Evaluate the applicant’s claim that no organic seed or planting stock was commercially available in the equivalent variety, form, quality, or quantity needed;

B. Validate that the applicant has properly and completely documented that the organic seed or planting stock was not commercially available. This includes validation of the documentation producers receive from buyers who require the use of non-organic varieties.

C. Require certified operators to update commercial availability information in each organic system plan update.

(C and E were deleted from the original documents)

Committee vote

To be determined

